

On January 21, 2005, defendants filed a 20-page sur-reply in opposition to class certification. Accompanying this sur-reply was a massive filing by defendants' principal expert, Steven J. Young ("Young"), consisting of a 98-page declaration, 35 additional pages of text, and 100-plus pages of charts, supplemented with 20 pages of binders.

After preparing for class certification, plaintiffs then spent hundreds of hours<sup>1</sup> analyzing Young's materials and reached several disturbing conclusions: (1) Young has distorted the record to support his conclusions; (2) he misstated evidence; (3) ignored evidence located a few bates numbers away from pages he cited; and (4) failed to account for newly produced material that contradicts the conclusions in his submission. Based on these distortions, he offered

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conclusions that are plainly false, one of which — that physicians are not reimbursed based upon AWP — is a centerpiece to defendants' opposition to the physician-administered class.

As a result of plaintiffs' discovery of Young's fraud on the court, plaintiffs moved for sanctions. This discovery is even more disturbing as it was clear that Dr. Berndt read and relied upon Young's distortions, and this Court is no doubt reviewing submissions based on Young's deceitful opinions. Plaintiffs believe that Young's transgressions warrant sanctions, including the striking from consideration by the Court all materials he has submitted and any citations to them in defendants' briefs and Dr. Berndt's report.

Though we have accommodated defendants' requests for additional time on every prior occasion, plaintiffs cannot do so here for the following reasons: (1) Young's materials have poisoned the truthful and just consideration of the class motion and removal of that taint cannot be delayed; (2) the issues are not complex — Young either is guilty or not — he either ignored evidence or he did not; and (3) plaintiffs offered a reasonable alternative. Namely, plaintiffs offered to agree to an extension if defendants would stipulate to simply ask the Court to withhold further consideration of the class motion to the extent opinions and factual matters relating to Young are cited, until this critical threshold issue was resolved. Defendants refused.

Defendants claim that plaintiffs will not be prejudiced by this motion. The opposite is true — every day that the tainted materials are before the Court creates prejudice.

Having created this situation, and having refused a fair interim measure, defendants' motion should be denied.

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